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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,805	03/21/2002	Geert Verreck	JANS-0031	2459

7590

02/09/2004

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EXAMINER

WEBMAN, EDWARD J

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NUMBER.	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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1/11/03

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 10/14/03

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-10, 12-22, 24-29 is/are pending in the application.
Of the above, claim(s) 14-22, 24-27 is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☒ Claim(s) 1-10, 12, 13, 28, 29 is/are rejected.
☐ Claim(s) _____ is/are objected to.
☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.
☐ received in Application No. (Series Code/Serial Number) _____
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
☐ Interview Summary, PTO-413
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Applicant's election with traverse of Group I, the active recited in claim 6 and the polymer recited in claim 9 in Paper No. 10-14-03 is acknowledged. The traversal is on the ground(s) that there is no burden and Group I and Group II are always treated together. This is not found persuasive because burden is shown by classification of the Groups in entirely different classes. Groups I, II are only treated together for convenience in distinguishing both from Group III.

The requirement is still deemed proper and is therefore made FINAL.

The Examiner agrees that claims 12 and 13 belong to Group I and that form 326 should have indicated "24-29" rather than "24-27", claim 27 belongs in Group II rather than Group I.

Claims 1-10, 12, 13, 28, 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 18 "HET" is indefinite.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12, 13, 28, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andries et al in view of Grabowski et al.

Andries et al teach the compound of claim 9 (example B11 column 29). Powders are specified (column 18 line 39).

Grabowski et al teach a controlled release vehicle for an active comprising 0-50% melt extruded active and 10-90% water soluble thermoplastic polymer (abstract). Hydroxy propyl methyl cellulose is disclosed (column 3 line 23). Granules are specified (column 4 line 52). Excipients are disclosed (column 3 line 59 et seq.).

It would have been obvious to one of ordinary skill to use the vehicle of Grabowski et al to deliver the active of Andries, *to achieve the beneficial effect of controlled release.*

No claims allowed.

The art cited on the PTO 1449s in the IDSs filed on 6/25/02 and 7/16/02 are not of record.

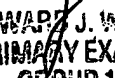
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 308-4432. The examiner can normally be reached on Monday-Friday 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan can be reached on 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1234.

Webman/tgd

January 13, 2004


EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500